

## Message Text

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ACTION ARA-14

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC PRIORITY 9002

INFO AMEMBASSY BOGOTA

AMEMBASSY LA PAZ

AMEMBASSY QUITO

DEA HQS WASHDC PRIORITY

C O N F I D E N T I A L LIMA 1932

DEA FOR ENOA

E.O. 11652: GDS

TAGS: SNAR, PE

SUBJECT: ANALYSIS OF NEW PERUVIAN DRUG LAW

REF: LIMA 1882

SUMMARY: THE GOP'S AMBITIOUS AND COMPREHENSIVE NEW DRUG LAW WILL IMPACT ON U.S. INTERESTS IN THREE BROAD AREAS: (1) ERADICATION/SUBSTITUTION OF COCA LEAF CULTIVATION; (2) TRAFFICKING IN COCAINE, COCA PASTE AND POSSIBLY OPIUM; AND (3) DETENTION OF U.S. CITIZENS ON DRUG CHARGES. IT HAS BOTH POSITIVE AND NEGATIVE ELEMENTS AS FAR AS U.S. INTERESTS ARE CONCERNED. IT CREATES A HIGH LEVEL POLICY FORMULATION GROUP AS WELL AS AN EXECUTIVE OFFICE OF COORDINATION WHICH SHOULD, IN THEORY, HELP TO MAKE THE GOP MORE RESPONSIVE TO U.S. INITIATIVES. EMBASSY QUESTIONS HOW EFFECTIVE GOP WILL BE ENFORCEMENT OF MANY OF LAW'S PROVISIONS, GIVEN PRESENT FINANCIAL DIFFICULTIES. PROSPECTS FOR U.S. CITIZENS CONVICTED ON DRUG CHARGES IN PERU

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ARE NOT BRIGHT. END SUMMARY.

1. EMBASSY FEELS THE GOP HAS MADE A SIGNIFICANT COMMITMENT TO THE SOLUTION OF THE COCA/COCAINE PROBLEM BY IDENTIFYING CONSUMPTION OF COCAINE AS WELL AS COCA LEAF CHEWING AS "SERIOUS SOCIAL PROBLEMS" AND BY PLEDGING A GRADUAL REDUCTION IN THE CULTIVATION OF COCA LEAVES. THE ELIMINATION, EVEN GRADUAL, OF

THE SOURCE OF ILLICIT COCAINE WILL NOT BE EASY. ALTHOUGH THE  
GOP PROVIDES CERTAIN CARROTS TO LEGAL PRODUCERS (PRIORITY  
CONSIDERATION IN STATE-SPONSORED COLONIZATION SCHEMES, THE VAGUE  
PROMISE OF TECHNICAL ASSISTANCE IN CROP SUBSTITUTION), EVEN FOR  
THESE REGISTERED PRODUCERS THE LAW IS LARGELY REPRESSIVE IN  
NATURE AND WILL ENCOUNTER STIFF OPPOSITION IF A SERIOUS EFFORT  
IS MADE TO ENFORCE IT WITHOUT SOME FORM OF CROP/INCOME  
SUBSTITUTION. IN MANY WAYS THE LAW ONLY REAFFIRMS AND REINFORCES  
EARLIER DISPOSITIONS (PROHIBITION ON NEW PLANTINGS, ENACO'S DE  
JURE CONTROL OVER PRODUCTION AND COMMERCIALIZATION OF COCA).

2. THE MOST INNOVATION PART OF CHAPTER IV ON PRODUCTION,  
COMMERCIALIZATION AND CONTROL (REFTEL PARA 4) ARE THE TIMETABLES  
SET FOR SUBSTITUTION/ERADICATION ON REGISTERED HOLDINGS. THE  
ECONOMIC AND SOCIAL IMPACT OF THESE PROVISIONS IS BLUNTED  
CONSIDERABLY, HOWEVER, BY THE FACT THAT THE GREAT MAJORITY OF  
LEGAL HOLDINGS ARE UNDER 5 HECTARES, AND THE TIMETABLE FOR  
ERADICATION/SUBSTITUTION ON SUCH PLOTS IS TO BE SET BY THE  
MINISTRY OF AGRICULTURE. GOP ACTION IN THIS REGARD WILL  
PROBABLY DEPEND TO A SIGNIFICANT DEGREE ON OFFICIAL PERCEPTIONS  
OF THE USG'S COMMITMENT TO PROVIDE TECHNICAL AND ECONOMIC  
ASSISTANCE TO CROP/INCOME SUBSTITUTION STUDIES AND PROJECTS AND  
THE POLITICAL/SOCIAL UNREST SUCH EFFORTS MIGHT PROVOKE.  
WE DO NOT ANTICIPATE WIDESPREAD CONFISCATION OF LAND DUE TO  
FAILURES TO COMPLY WITH LAW. THE "TRANSITORY PROVISIONS"  
(REFTEL PARA 8) CONTEMPLATE AN EXTENSION OF THE TIME LIMIT FOR  
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LEGAL PLOTS OF 5 OR MORE HECTARES.

3. IN WHAT APPEARS TO BE A LAST-MINUTE ADDITION TO THE LAW, TIME  
LIMIT ARE SET (REFTEL PARA 8) FOR ILLEGAL GROWERS TO COMPLY  
WITH ERADICATION/SUBSTITUTION. BUT IN THIS CASE ALSO, THE GOP  
GIVES ITSELF CONSIDERABLE LATITUDE FOR DEALING WITH ILLEGAL  
GROWERS BELOW THE 5 HECTARE LIMIT, WHICH PROBABLY REPRESENTS AN  
EVEN GREATER PERCENTAGE THAN DO THE REGISTERED GROWERS.

4. THE MOST IMPORTANT "ESCAPE CLAUSE" AS FAR AS THE GOP'S  
COMMITMENT TO ENFORCE IN THE NEAR TERM ERADICATION/SUBSTITUTION AT AN  
Y

LEVEL IS THE PROVISION (ALSO IN THE "TRANSITORY DISPOSITION") THAT THE  
ENFORCEMENT OF THE NEW LAW WILL NOT OCCASION GREATER FISCAL  
DEMANDS ON THE GOP THAN THOSE ALREADY ESTABLISHED IN THE 1978  
NATIONAL BUDGET. HOW MUCH THE GOP BUDGETS TO THIS PROGRAM IN  
1979 AND SUBSEQUENT YEARS WILL, OF COURSE, DEPEND ON ECONOMIC  
CONDITIONS AND THE AMOUNT OF OUTSIDE HELP PERU RECEIVES.

5. IN THE AREAS OF REPRESSION OF INTERNATIONAL DRUG TRAFFIC, THE  
NEW LAW CONTAINS POSITIVE ELEMENTS. THE PIP'S PRIMARY ROLE IN

THE REPRESSION OF DRUG TRAFFICKING IS CONFIRMED AND STRENGTHENED, AND A FAIRLY CLEAR-CUT DISTINCTION IS MADE BETWEEN THE RESPONSIBILITIES OF THE GUARDIA CIVIL (ERADICATION, CONTROL OF CROP SUBSTITUTION, SUPPORT FOR ENACO) AND THE PIP.

6. THE CREATION OF THE MULTISECTORAL COMMITTEE FOR DRUG CONTROL THE EXECUTIVE OFFICE FOR DRUG CONTROL UNDER THE MINISTER OF THE INTERIOR SHOULD HELP GIVE NEEDED IMPETUS AND DIRECTION TO THE GOV'S DRUG POLICIES. IN GIVING THE EXECUTIVE OFFICE AUTHORITY OVER INTERNATIONAL COOPERATION AGAINST DRUG ABUSE AND TRAFFICKING AS WELL AS COORDINATION OF INTERNATIONAL TECHNICAL AND ECONOMIC RESOURCES, THE GOV CLEARLY HAD IN MIND AN EXPANDED US AND THIRD NATION ROLE IN COMBATING THE DRUG PROBLEM. THE DEGREE OF EFFECTIVENESS OF THESE TWO ORGANIZATIONS WILL DEPEND  
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ON THE INTERPLAY OF SECTORAL INTEREST AT THE COMMITTEE LEVEL AND THE DYNAMISM AND EFFECTIVENESS OF THE PERSONNEL OF THE EXECUTIVE OFFICE. WE EXPECT TO SEE FAMILIAR FACES IN THESE KEY POSITIONS AND WILL MOVE QUICKLY TO REINFORCE TIES ONCE THEY HAVE BEEN IDENTIFIED

7. THE PROVISION EXCLUDING THE POLICE FROM THE EXECUTIVE OFFICE COULD CUT TWO WAYS. IT COULD CREATE FRICTION BETWEEN POLICY INTERPRETERS AND IMPLEMENTERS AND LESSEN THE EFFECTIVENESS OF REPRESSION EFFORTS. IT COULD ALSO PROVIDE A DEGREE OF CHECKS AND BALANCES, GIVEN THE GREAT POTENTIAL FOR CORRUPTION TO WHICH THE PIP IS SUBJECTED BY THE VERY NATURE OF ITS WORK.

8. THE PRISON SENTENCES ESTABLISHED FOR INTERNATIONAL DRUG TRAFFICKERS ARE STIFFER THAN EXPECTED. THOSE CONVICTED OF "PROMOTING, ORGANIZING, FINANCING OR DIRECTING" INTERNATIONAL DRUG TRADE ARE SUBJECT TO "PENA DE INTERNAMIENTO" OF UNDETERMINED DURATION BUT, ACCORDING TO OUR READING OF PERUVIAN LEGAL TEXTS, A MINIMUM OF 25 YEARS. THESE SENTENCES, THE MOST SEVERE CONTEMPLATED BY THE PERUVIAN PENAL CODE, ARE GENERALLY SERVED IN ISOLATED, DEVIL'S ISLAND-STYLE PRISON COLONIES, SUCH AS EL SEPA IN THE AMAZON. OTHER INVOLVED IN INTERNATIONAL TRAFFICKING WOULD RECEIVE MINIMUM SENTENCES OF 15 YEARS IN REGULAR PRISON. THIS CATEGORY WOULD PRESUMABLY INCLUDE MOST CASES INVOLVING US CITIZENS. RECENT AVERAGE SENTENCES HAVE BEEN FOR A MINIMUM TWO YEARS.

9. ARTICLE 64 OF THE LAW PROHIBITS PROVISIONAL LIBERTY, CONDITIONAL LIBERATION, COMMUTATION OF SENTENCE, CONDITIONAL IMPRISONMENT AND PARDON FOR CONVICTED DRUG OFFENDERS. IT DOES NOT MENTION "CORTE DE SECUELA," OR PRESENTENCING AMNESTY, A PARDON GRANTED DURING THE PROCESS OF PRELIMINARY INVESTIGATION BY THE INVESTIGATIVE COURT (JUEZ DE PRIMERA INSTANCIA). THIS  
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OMISSION MAY BE INTENTIONAL. SIX U.S. CITIZENS WERE RELEASED VIA THE "CORTE DE SECUELA" MECHANISM AT THE TIME OF THE PRESIDENT'S DECEMBER AMNESTY, AND OTHERS WERE RELEASED EARLIER BY THE SAME PROCEDURE. WE HAVE CONSULTED WITH EMBASSY LAWYER ON THE COMPREHENSIVENESS OF PROHIBITION IN ART. 64. THE IMPLICATIONS OF THE ARTICLE'S LANGUAGE ARE NOT ENTIRELY CLEAR EVEN TO HIM. THE 1949 LAW WHICH THE PRESENT LAW SUPERCEDES PROHIBITS "COMMUTATION, PARDON, AMNESTY, CONDITIONAL IMPRISONMENT, CONDITIONAL LIBERATION OR DONDITIONAL SUSPENSION OF SENTENCE," YET OVER THE YEARS A NUMBER OF DRUG OFFENDERS HAVE SLIPPED THROUGH THE FINGERS OF THE PERUVIAN JUDICIAL SYSTEM VIA A VARIETY OF MEANS. WE WILL SEEK CLARIFICATION OF THE MEANING OF THIS OMISSION. AT ANY RATE, THE STIFF SENTENCES PRESCRIBED FOR COURIERS INVOLVED IN INTERNATIONAL TRAFFICKING MAK IT INCUMBENT ON THE USG TO PUBLICIZE AS WIDELY AS POSSIBLE THE GRAVE POTENTIAL RISK INVOLVED IN EVEN CASUAL TRAFFICKING IN PERU. THE PROSPECTS FOR THOSE U.S. CITIZENS CHARGED OR CONVICTED ON DRUG OFFENSES ARE NOT BRIGHT, DESPITE WHAT MAY BE A LOOPHOLE IN ART. 64. APPROVAL OF NEW LAW UNDERLINES THE IMPORTANCE OF PROCEEDING WITH DISCUSSION FOR POSSIBLE PRISONER REPATRIATION/EXCHANGE AGREEMENT WITH THE GOP. SHLAUDEMAN

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## Message Attributes

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